

The Honorable Richard A. Jones

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Northwest Pulp & Paper Association, American Forest  
& Paper Association, Western Wood Preservers Institute,  
Treated Wood Council, and the Washington Farm Bureau*

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

STATE OF WASHINGTON,  
Plaintiff,

and

SAUK-SUIATTLE INDIAN TRIBE and  
QUINALT INDIAN NATION

Plaintiff-Intervenors,

v.

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY and ANDREW  
WHEELER, Administrator, United States  
Environmental Protection Agency,

Defendants,

and

NORTHWEST PULP & PAPER  
ASSOCIATION, AMERICAN FOREST &  
PAPER ASSOCIATION, WESTERN WOOD  
PRESERVERS INSTITUTE, TREATED  
WOOD COUNCIL, and WASHINGTON  
FARM BUREAU,

Defendant-Intervenors.

Case No. 2:19-cv-00884-RAJ

DECLARATION OF DOUGLAS P.  
KRAPAS IN SUPPORT OF  
DEFENDANT-INTERVENORS  
ASSOCIATIONS' RESPONSE TO  
WASHINGTON MOTION FOR  
SUMMARY JUDGMENT AND  
CROSS-MOTION

NOTE ON MOTION CALENDAR:  
June 30, 2020

KRAPAS DECLARATION IN SUPPORT OF  
DEFENDANT-INTERVENORS ASSOCIATIONS'  
RESPONSE TO WASHINGTON MOTION FOR  
SUMMARY JUDGMENT AND CROSS-MOTION  
Case No. 2:19-cv-00884-RAJ

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1 Douglas P. Krapas, under penalty of perjury, states and declares as follows:

2 1. I am the Environmental Manager for Inland Empire Paper Company ("Inland").

3 This declaration is based on my personal knowledge except where indicated.

4 2. Inland owns and operates a pulp and paper mill in Millwood, Washington that has  
5 been in continuous operation since 1911 and currently employs 133 workers in its operations.

6 Inland is proud of its stewardship of the environment and commitment to best practices to meet  
7 environmental standards and improve environmental quality including water quality in the  
8 Spokane River.

9 3. For water quality, Inland does this in part under the terms of its National Pollutant  
10 Discharge Elimination System ("NDPES") Permit issued by the Washington State Department  
11 of Ecology ("Ecology"). The Permit became effective on November 1, 2011 and expired on  
12 October 31, 2016. Inland timely applied for a renewal of the Permit in April 2016 and the  
13 application was accepted by Ecology. Ecology has administratively extended the permit and it  
14 remains in effect pending renewal.

15 4. Polychlorinated Biphenyls ("PCBs") present a unique problem for the Spokane  
16 River. PCB concentrations in fish tissue samples taken from the river are among the highest in  
17 the state of Washington, resulting in much of the river above Long Lake Dam to the Idaho state  
18 line being listed as impaired for PCBs. Although Inland itself does not produce PCBs in its  
19 manufacturing process, PCBs that are allowable under the Federal Toxic Substances Control  
20 Act ("TSCA") are present in the inks and dyes contained in the recycled paper stock received at  
21 its facility. PCB levels allowed under TSCA are hundreds of millions or even billions of times  
22 higher than water quality standards for the Spokane River. Inland has little control over PCBs  
23 coming into its manufacturing process since it collects recycled paper products from numerous  
24 sources over a distance as far as 1,500 miles from its location. Inland operates one of the few  
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1 remaining pulp and paper mills in the state of Washington that produces recycled paper  
2 products.

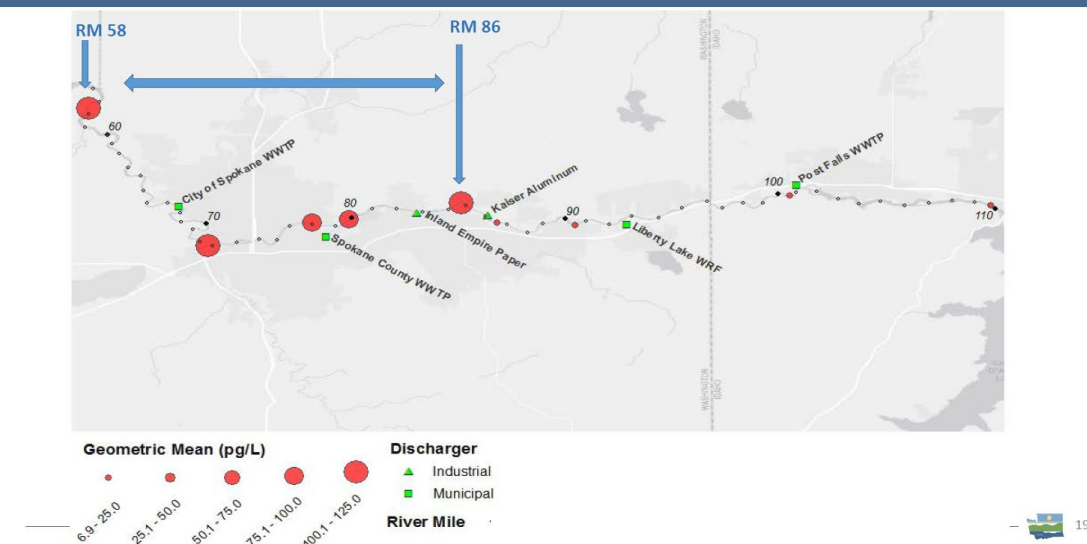
3 5. In 2019 Inland installed a tertiary process water treatment system consisting of  
4 microscopic membrane filters. This system represents the most advanced water quality  
5 treatment system installed at any pulp and paper mill in North America. Inland selected this  
6 technology based on 15 years of research and testing on the best available technologies to  
7 reduce discharges of both nutrients and PCBs. This research included the evaluation of over 20  
8 different cutting-edge technologies including the development of a system designed to use algae  
9 to remove nutrients and PCBs from effluent. As a result of these research efforts, Inland  
10 installed several full-scale water quality system improvements towards the goal of meeting  
11 applicable water quality standards. Ecology has determined (and publicly stated) that the Inland  
12 treatment systems constitute the best available control technologies to address PCBs.

13 6. Inland is also a member of the Spokane River Regional Toxics Task Force (“Task  
14 Force”) formed in 2012 as a requirement under the terms of Inland’s NPDES permit and the  
15 NPDES permits issued to other dischargers on the river. Special Condition S7 of the Permit  
16 requires that Inland participate in efforts to create the Task Force and participate in the functions  
17 of the Task Force.

18 7. The success of the Task Force can be seen in improved water quality in the  
19 Spokane River. Ecology recently presented data that indicates total PCB concentrations  
20 throughout the river are now below the Washington PCB criterion of 170 pg/L. This data was  
21 presented by Ecology at meetings held on April 8 and 23, 2020 to provide information  
22 regarding the Spokane River variance applications. Imbedded below is a true and correct copy  
23 of Slide 19 from Ecology’s presentations available at:

24 [https://fortress.wa.gov/ecy/ezshare/wq/standards/Workshop\\_Presentation.pdf](https://fortress.wa.gov/ecy/ezshare/wq/standards/Workshop_Presentation.pdf)  
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## PCBs in the Spokane River



8. The May 10, 2019 EPA reconsideration and approval of the Washington state human health water quality criteria, including the criterion for total PCBs, will continue to support the ongoing work of Inland, the Task Force and others to address PCBs in the Spokane River. This is not a small matter as Washington's PCB criterion of 170 pg/L provides a framework to address and continue current efforts to mitigate PCBs through improved water quality treatment and the collaborative efforts of the Task Force. There is a reasonable expectation that over time fish tissue concentrations of PCBs will decline as the river maintains compliance with the water quality criterion.

9. Conversely, the PCB criterion of 7 pg/L imposed by EPA in 2016 is not currently achievable, as there are no available water quality treatment technologies capable of meeting this standard. This conclusion is based on Inland's extensive experience since 2004 in researching and conducting pilot studies of various treatment technologies to address PCBs in its effluent, and Ecology's conclusions resulting from their research conducted for variance applications. It is unlikely that Inland will ever be able to achieve 7 pg/L at the point of discharge without substantial advances in treatment technology. There may be no clear path

1 forward even with a variance if the river or any discharger are unable to meet the EPA standard  
2 of 7 pg/L.

3 10. The State of Washington is not prejudiced by the decision of EPA to reconsider  
4 and approve Washington's human health criteria as the Washington PCB criterion supports and  
5 allows the work of permittees and the Task Force to continue in a constructive manner to  
6 achieve lower PCB fish tissue concentrations.

7 11. The State of Washington is also not prejudiced by the threat of litigation and  
8 resulting uncertainty in whether the applicable PCB criterion is based on Ecology's rule or the  
9 now withdrawn EPA criterion. The PCB criterion would likely have been in litigation regardless  
10 of the EPA action. Just as the state proceeded with implementation of the EPA promulgated  
11 PCB criterion while a petition for reconsideration was pending before EPA, the state can  
12 proceed with implementation while any legal challenge to the EPA action to approve the  
13 Washington PCB criterion is pending. Inland is aware that variances are very controversial  
14 among some environmental groups and Indian Tribes. It fully expects legal challenges to any  
15 variance issued by Ecology and approved by EPA. The decision by EPA to reconsider and  
16 approve Washington's human health criteria does not change the declared opposition to  
17 variances or the threat of litigation.

18 12. The statements in Vince McGowan's declaration that EPA approval of the  
19 Washington PCB criterion creates uncertainty for the PCB variance process on the Spokane  
20 River contradicts statements by Ecology representatives at public meetings related to the  
21 variance applications held on November 14, 2019 and April 8 and 23, 2020. At these meetings  
22 Ecology staff was clear that the May 10, 2019 decision to approve Washington's PCB criterion  
23 would not impact whether Ecology proceeded with developing variances. Ecology staff in  
24 response to questions at the November public meeting indicated that variances would continue  
25 to be developed because segments of the Spokane River are listed as impaired for PCBs based

1 on fish tissue concentrations regardless of whether Washington's PCB criterion became the  
2 applicable water quality standard.

3 13. A variance is just one regulatory tool available to Ecology to address PCB  
4 contamination in the river. EPA approval of the Washington human health criteria does not  
5 prejudice the ability of Ecology to consider the range of implementation tools available to  
6 address PCBs, including variances. The Department of Ecology is not therefore prejudiced even  
7 if it reconsiders whether to proceed with variances on the Spokane River. The interests of the  
8 state should not be centered on one regulatory tool. It is more important for the state to pursue  
9 the best implementation tools available to continue the success of existing permitting and  
10 collaborative strategies to achieve water quality standards in the Spokane River.

11 14. In contrast, the now withdrawn EPA promulgated PCB criterion of 7 pg/L would  
12 have introduced uncertainty by setting a standard that is currently unachievable.

13 Dated at Spokane, Washington, this 26<sup>th</sup> day of May, 2020.

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16 Douglas P. Krapas  
17 Environmental Manager  
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